

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID B. BROWN,

Petitioner,

vs.

ROB JEFFREYS,

Respondent.

4:24CV3153

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's "Motion for Clarification and Request for Extension of Time or to Strike the Respondent's Request for Summary Judgment" (the "Motion") filed on January 23, 2025. [Filing No. 17](#). For the reasons that follow, the Motion shall be granted in part and denied in part.

Petitioner first requests clarification as to the proceedings in this case because Petitioner received notice on January 13, 2025, that Respondent had filed a motion for summary judgment, but Petitioner is unable to respond to the motion because he has not received a copy of any summary judgment materials. Petitioner asks that Respondent "submit a brief to him so that he can respond." [Filing No. 17](#). Respondent filed a motion for summary judgment, [Filing No. 11](#), a designation of state court records, [Filing No. 12](#), a statement of undisputed material facts, [Filing No. 13](#), and a brief, [filing No. 14](#), on January 13, 2025, and included certificates of service certifying that each filing was mailed to Petitioner at the Nebraska State Penitentiary. However, as of January 20, 2025, Petitioner had not received any of the summary judgment materials. The Court's progression order requires Respondent to serve copies of the motion for summary judgment, the

designation, including the specific pages of the state court records cited by Respondent, and Respondent's brief on Petitioner. [Filing No. 7](#). Accordingly, the Court will order Respondent to file a response to Petitioner's Motion and show cause why Petitioner has not received the summary judgment materials as required.

Petitioner next asks in his Motion that the Court strike Respondent's summary judgment motion because "the factual basis of the petitioner's claim is the Actual Innocence of petitioner." [Filing No. 17](#). The Court will deny Petitioner's motion because Respondent's summary judgment motion was filed in accordance with the Court's progression order, [Filing No. 7](#), and Petitioner may present and argue his actual innocence in opposing Respondent's summary judgment motion.

Finally, Petitioner requests an extension of time to file his brief in opposition. Upon consideration, the Court will grant Petitioner's request for an extension. For now, Petitioner's deadline to file and serve his brief is suspended until after Respondent has an opportunity to respond to the Motion and the Court is satisfied that the summary judgment materials have been provided to Petitioner. The Court will set a new briefing deadline for Petitioner at that time.

IT IS THEREFORE ORDERED that:

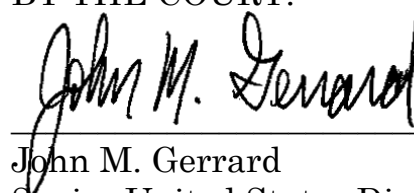
1. Petitioner's Motion, [Filing No. 17](#), is granted in part, and denied in part, as follows:
 - a. Petitioner's request for clarification is granted. On or before February 26, 2025, Counsel for Respondent shall submit a response to Petitioner's Motion consistent with this Memorandum and Order.

- b. Petitioner's motion to strike Respondent's summary judgment motion is denied.
- c. Petitioner's request for an extension is granted. Petitioner's deadline to submit his brief in opposition to summary judgment is suspended. After Respondent files a response to Petitioner's Motion as required by this order, the Court will set a new deadline for Petitioner to submit his brief.

2. The Clerk of Court is directed to set a pro se case management deadline using the following text: **February 26, 2025**: deadline for Respondent to file response to Motion.

Dated this 6th day of February, 2025.

BY THE COURT:

A handwritten signature in black ink, reading "John M. Gerrard", is written over a horizontal line.

John M. Gerrard
Senior United States District Judge